

of ERISA, the term “3-year testing period” means the period consisting of the plan year for which the determination is made and the two immediately preceding plan years, excluding any plan year during the period of withdrawal.

(2) *Contribution base units for high base year.* For purposes of section 4205(b)(1) of ERISA and except as provided in section 108(d)(3) of the Multiemployer Act, in determining the number of contribution base units for the high base year, if the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, the number of contribution base units for each such year of withdrawal shall be deemed to be the greater of—

(i) The employer's contribution base units for that plan year; or

(ii) The average of the employer's contribution base units for the three plan years preceding the plan year in which the employer completely withdrew from the plan.

(c) *Partial withdrawal—partial cessation of contribution obligation.* The plan sponsor shall determine whether there is a partial withdrawal described in section 4205(a)(2) of ERISA (relating to a partial cessation of the employer's contribution obligation) in accordance with the rules in section 4205 of ERISA, as modified by the rules in this paragraph, and section 108 of the Multiemployer Act. In making this determination, the sponsor shall exclude all plan years during the period of withdrawal. A partial withdrawal under this paragraph can occur no earlier than the plan year of reentry. If the sponsor determines that there was a partial withdrawal, it shall determine the amount of an employer's liability for that partial withdrawal in accordance with the rules in § 4207.8(c).

§ 4207.7 Liability for subsequent complete withdrawals and related adjustments for allocating unfunded vested benefits.

(a) *General.* When an eligible employer that has had its liability for a complete withdrawal abated under this part completely withdraws from the plan, the employer's liability for that subsequent withdrawal shall be deter-

mined in accordance with the rules in sections 4201–4225 of title IV, as modified by the rules in this section, and section 108 of the Multiemployer Act. In the case of a combination described in § 4207.9(d), the modifications described in this section shall be applied only with respect to that portion of the eligible employer that had previously withdrawn from the plan. In the case of a combination described in § 4207.9(e), the modifications shall be applied separately with respect to each previously withdrawn employer that comprises the eligible employer. In addition, when a plan has abated the liability of a reentered employer, if the plan uses either the “presumptive” or the “direct attribution” method (section 4211(b) or (c)(4), respectively) for allocating unfunded vested benefits, the plan shall modify those allocation methods as described in this section in allocating unfunded vested benefits to any employer that withdraws from the plan after the reentry.

(b) *Allocation of unfunded vested benefits for subsequent withdrawal in plans using “presumptive” method.* In a plan using the “presumptive” allocation method under section 4211(b) of ERISA, the amount of unfunded vested benefits allocable to a reentered employer for a subsequent withdrawal shall equal the sum of—

(1) The unamortized amount of the employer's allocable shares of the amounts described in section 4211(b)(1), for the plan years preceding the initial withdrawal, determined as if the employer had not previously withdrawn;

(2) The sum of the unamortized annual credits attributable to the year of the initial withdrawal and each succeeding year ending prior to reentry; and

(3) The unamortized amount of the employer's allocable shares of the amounts described in section 4211(b)(1)(A) and (C) for plan years ending after its reentry. For purposes of paragraph (b)(2), the annual credit for a plan year is the amount by which the employer's withdrawal liability payments for the year exceed the greater of the employer's imputed contributions or actual contributions for the

year. The employer's imputed contributions for a year shall equal the average annual required contributions of the employer for the three plan years preceding the initial withdrawal. The amount of the credit for a plan year is reduced by 5 percent of the original amount for each succeeding plan year ending prior to the year of the subsequent withdrawal.

(c) *Allocation of unfunded vested benefits for subsequent withdrawal in plans using "modified presumptive" or "rolling-5" method.* In a plan using either the "modified presumptive" allocation method under section 4211(c)(2) of ERISA or the "rolling-5" method under section 4211(c)(3), the amount of unfunded vested benefits allocable to a reentered employer for a subsequent withdrawal shall equal the sum of—

(1) The amount determined under section 4211 (c)(2) or (c)(3) of ERISA, as appropriate, as if the date of reentry were the employer's initial date of participation in the plan; and

(2) The outstanding balance, as of the date of reentry, of the unfunded vested benefits allocated to the employer for its previous withdrawal (as defined in paragraph (c)(2)(i) of this section) reduced as if that amount were being fully amortized in level annual installments, at the plan's funding rate as of the date of reentry, over the period described in paragraph (c)(2)(ii), beginning with the first plan year after reentry.

(i) The outstanding balance of the unfunded vested benefits allocated to an employer for its previous withdrawal is the excess of the amount determined under section 4211 (c)(2) or (c)(3) of ERISA as of the end of the plan year in which the employer initially withdrew, accumulated with interest at the plan's funding rate for that year, from that year to the date of reentry, over the withdrawal liability payments made by the employer, accumulated with interest from the date of payment to the date of reentry at the plan's funding rate for the year of entry.

(ii) The period referred to in paragraph (c)(2) for plans using the modified presumptive method is the greater of five years, or the number of full plan years remaining on the amortization schedule under section 4211(c)(2)(B)(i)

of ERISA. For plans using the rolling-5 method, the period is five years.

(d) *Adjustments applicable to all employers in plans using "presumptive" method.* In a plan using the "presumptive" allocation method under section 4211(b) of ERISA, when the plan has abated the withdrawal liability of a reentered employer pursuant to this part, the following adjustments to the allocation method shall be made in computing the unfunded vested benefits allocable to any employer that withdraws from the plan in a plan year beginning after the reentry:

(1) The sum of the unamortized amounts of the annual credits of a reentered employer shall be treated as a reallocated amount under section 4211(b)(4) of ERISA in the plan year in which the employer reenters.

(2) In the event that the 5-year period used to compute the denominator of the fraction described in section 4211 (b)(2)(E) and (b)(4)(D) of ERISA includes a year during the period of withdrawal of a reentered employer, the contributions for a year during the period of withdrawal shall be adjusted to include any actual or imputed contributions of the employer, as determined under paragraph (b) of this section.

(e) *Adjustments applicable to all employers in plans using "direct attribution" method.* In a plan using the "direct attribution" method under section 4211(c)(4) of ERISA, when the plan has abated the withdrawal liability of a reentered employer pursuant to this part, the following adjustments to the allocation method shall be made in computing the unfunded vested benefits allocable to any employer that withdraws from the plan in a plan year beginning after the reentry:

(1) The nonforfeitable benefits attributable to service with a reentered employer prior to its initial withdrawal shall be treated as benefits that are attributable to service with that employer.

(2) For purposes of section 4211(c)(4)(D)(ii) and (iii) of ERISA, withdrawal liability payments made by a reentered employer shall be treated as contributions made by the reentered employer.

(f) *Plans using alternative allocation methods under section 4211(c)(5).* A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of ERISA and part 4211 of this chapter shall adopt by plan amendment a method of determining a reentered employer's allocable share of the plan's unfunded vested benefits upon its subsequent withdrawal. The method shall treat the reentered employer and other withdrawing employers in a manner consistent with the treatment under the paragraph(s) of this section applicable to plans using the statutory allocation method most similar to the plan's alternative allocation method.

(g) *Adjustments to amount of annual withdrawal liability payments for subsequent withdrawal.* For purposes of section 4219(c)(1)(C)(i)(I) and (ii)(I) of ERISA, in determining the amount of the annual withdrawal liability payments for a subsequent complete withdrawal, if the period of ten consecutive plan years ending before the plan year in which the withdrawal occurs includes a plan year during the period of withdrawal, the employer's number of contribution base units, used in section 4219(c)(1)(C)(i)(I), or the required employer contributions, used in section 4219(c)(1)(C)(ii)(I), for each such plan year during the period of withdrawal shall be deemed to be the greater of—

(1) The employer's contribution base units or the required employer contributions, as applicable, for that year; or

(2) The average of the employer's contribution base units or of the required employer contributions, as applicable, for those plan years not during the period of withdrawal, within the ten consecutive plan years ending before the plan year in which the employer's subsequent complete withdrawal occurred.

§ 4207.8 Liability for subsequent partial withdrawals.

(a) *General.* When an eligible employer that has had its liability for a complete withdrawal abated under this part partially withdraws from the plan, the employer's liability for that subsequent partial withdrawal shall be determined in accordance with the rules

in sections 4201–4225 of ERISA, as modified by the rules in § 4207.7 (b) through (g) of this part and the rules in this section, and section 108 of the Multiemployer Act.

(b) *Liability for a 70-percent contribution decline.* The amount of an employer's liability under section 4206(a) (relating to the calculation of liability for a partial withdrawal), section 4208 (relating to the reduction of liability for a partial withdrawal) and section 4219(c)(1) (relating to the schedule of partial withdrawal liability payments) of ERISA, for a subsequent partial withdrawal described in section 4205(a)(1) of ERISA (relating to a 70-percent contribution decline) shall be modified in accordance with the rules in this paragraph.

(1) *Definition of “3-year testing period.”* For purposes of sections 4206(a) and 4219(c)(1) of ERISA, and paragraphs (b)(2)–(b)(4) of this section, the term “3-year testing period” means the period consisting of the plan year for which the determination is made and the two immediately preceding plan years, excluding any plan year during the period of withdrawal.

(2) *Determination date of section 4211 allocable share.* For purposes of section 4206(a)(1)(B) of ERISA, the amount determined under section 4211 shall be determined as if the employer had withdrawn from the plan in a complete withdrawal on the last day of the first plan year in the 3-year testing period or the last day of the plan year in which the employer reentered the plan, whichever is later.

(3) *Calculation of fractional share of section 4211 amount.* For purposes of sections 4206(a)(2)(B)(ii) and 4219(c)(1)(E)(ii) of ERISA, if the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, then, in determining the denominator of the fraction described in section 4206(a)(2), the employer's contribution base units for each such year of withdrawal shall be deemed to be the greater of—

(i) The employer's contribution base units for that plan year; or

(ii) The average of the employer's contribution base units for the three plan years preceding the plan year in